costs is to spread them over a larger number of viewers, and this requires reform in the national ownership rules.

II. The Commission's Proposal to Relax the Local Broadcast Television "Duopoly" Rule Will Serve the Public Interest

The local ownership rules prohibit common ownership of two television stations whose grade B contours overlap in the interest of promoting competition and diversity. The FNPRM proposes to modify the contour overlap rule from Grade B to Grade A. The FNPRM states that relaxing the local ownership rules would provide for cost-sharing in administrative and overhead expenses, sharing of personnel, joint advertising sales, and the pooling of resources for local program production.[40] As a result, the FNPRM suggests, the cost savings from these economies could then be used to provide better programming to the public. In addition, the FNPRM requests comment on whether the Commission should allow a single entity to acquire stations with overlapping contours, and whether it should permit common ownership in local markets, such as UHF/UHF combinations or VHF/UHF combinations.

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[40] See FNPRM at para. 107.

New World strongly supports the Commission's proposal to relax the local ownership "duopoly" rule. Currently, the average number of licensed stations in markets one through ten (top markets) is 13.4; the average number of stations in markets 21-30 (mid-sized markets) is 9.8; and the average number of stations in markets 101-110 (small markets) is 5.3.[41] Therefore, when the number of local alternative video outlets are considered, New World submits that there is sufficient competition and diversity in the large and medium television markets to justify loosening the duopoly rule.

A significant body of research establishes that in markets where there are already several competitors, there are no additional competitive benefits to prohibiting joint ownership. For example, the value of cable companies rose approximately 7.5% after deregulation in 1984, indicating expected higher profits and possible anti-competitive influences. However, this effect is caused completely by reaction outside the top 100 markets, where the value of firms rose by an average of 30% after deregulation. In the top 100 markets, there was no significant change (if anything, there was a drop) in the value of cable companies.[42] This suggests that

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[41] It is estimated that cable systems will serve 60.4 million subscribers in 1995. Media War Games: As 'Joshua' Said, "Nobody Wins", Cable TV Investor, May 18, 1994, at 4 ("Media Wars"). In addition, 170 wireless cable systems currently provide service to roughly 200,000 customers. A Short Course in Wireless Cable, Broadcasting & Cable, May 1, 1995, at 18.

[42] See Adam B. Jaffe & David M. Kanter, Market Power of Local Cable Television Franchises: Evidence From the Effects of Deregulation, 21 Rand J. Econ. 226, 231 (1990).

within the top 100 television markets (ranked by size) there is more than enough competition to prevent the exercise of market power. New World recommends using the average number of broadcasters in markets 101-110, which is 5.3, as a limit below which the Commission start to become concerned about possible anti-competitive effects from concentration.

Specifically for medium and large markets, New World recommends eliminating the duopoly rule by allowing acquisitions on a first-come, first-served basis provided that six separately licensed stations remain in the market.[43] This reform would serve efficiency interests by allowing better allocation of production and overhead costs, and would not hurt diversity interests given the required number of separately licensed stations and the growing competition from alternative sources.[44]

Indeed, it would be *beneficial* to local diversity to allow some consolidation in the larger local broadcast areas because more entities would be able to support new program origination. The analysis given by the Commission in FNPRM has focused on local and national markets as if they exist independently and in

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[43] Even using a narrowly defined market of broadcast stations, only six stations result in moderate concentration. HHI = (100/6)*(100/6)*6 = 1666. Using a more appropriate market definition, which accounted for cable channels and other sources of video programming, the HHI would be much lower. Using 1992 data, the mean HHI calculated when using cable plus broadcast audience is approximately 40% lower than when using broadcast audience only. See Benjamin J. Bates, Concentration in Local Television Markets, 6 J. Media Econ. 10, 3-21 (1993).

[44] See Media Wars at 4 (noting that "... cable TV's share of multichannel homes falls from a current 96% to 74% by 2003, while telcos, wireless and direct satellite marketers grab the other 26%").

isolation. In fact, local programming units must compete with national programming units for the labor services of a limited group of high-skill programming producers, the principal input for any kind of quality programming regardless of whether they are local or national. As it stands, many local broadcasters find it difficult to retain their best personnel. New World submits that this difficulty is exacerbated by the Commission's policy on local overlap.

In medium and large markets, providing for larger and more vital production groups would help local broadcasters to compete with national media in retaining their most valuable personnel. As a result, more voices would be heard in the community and diversity would be promoted. Additionally, the synergies obtained by combining the abilities of different production groups in a creative industry such as broadcasting cannot be underestimated. For these reasons, New World strongly advocates reform in the local overlap rules and specifically requests consideration of its proposal to allow combinations in medium and large markets as long as six separately licensed stations are maintained [45]

Further, New World submits that UHF/UHF and VHF/UHF combinations should be allowed in all DMAs with at least six video outlets

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[45] New World notes that the Commission's proposal to limit its duopoly rule to Grade A contour overlaps between commonly owned stations would be a limited reform. Specifically, this change would allow commonly owned stations in markets located outside the Grade A but within the Grade B contour to co-exist. New World maintains, however, that this rule change would affect only small market dynamics and would not in itself assist growing companies, such as New World, to achieve the capacity necessary to compete in the multichannel marketplace.

(comprised of at least three broadcast TV channel combinations, at least two 100-plus channel digital satellite broadcasters and a 50 or more channel cable operator). If and when the Commission authorizes Advanced Television ("ATV") frequencies, the combinations should receive the ATV channels allocated to their respective conventional National Television Standards Committee ("NTSC") channels, thus permitting a broadcaster to provide as many as four channels of programming. This plan would result in a minimum of six multichannel video programmers in each of the 29 largest television markets (representing over 50% of national television audience homes) and more competitors in markets with video dialtone and/or wireless cable.

III. The Commission Should Eliminate the Local Radio-Television Cross-Ownership Rule

The radio-television cross-ownership rule, or the "one-to-a-market" rule, prohibits a single entity from owning both a radio and television station located in a given "local" market in order to promote competition and diversity within that market.[46] Currently, radio-television mergers are permissible on a waiver-basis in the top 25 television markets where 30 separately owned broadcast licensees remain after

[46] Id. at 105.

the merger, where the waiver request involves a "failed" station, or where the waiver request meets certain public interest criteria.[47]

New World recommends that the Commission eliminate the broadcast cross-ownership rule except in markets where there are fewer than three commercial television stations. This reform would promote competition by enabling a licensee to achieve necessary economies without harming viewpoint diversity in the local market. In addition, New World agrees with the Commission that the video and audio markets are sufficiently distinct that liberalization of this rule should not harm the local delivered programming, advertising, and program production markets.

Collocated radio and television stations do not operate in the same program delivery market, but do operate in the same market for purposes of advertising viewpoint diversity. New World submits that the current local radio ownership caps should remain in effect, pending a possible rulemaking to investigate the need for their elimination. Meanwhile, a television broadcaster should be allowed to merge with or acquire radio stations in the same market, including a UHF/UHF or VHF/UHF combination, to the extent that the radio station combinations are permissible under existing rules. As the Commission has recognized, grandfathered AM/FM/TV combinations continue to serve the public interest (as have grandfathered

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[47] Id. at para. 124, n.151 (noting that the criteria includes: the types of facilities involved, the number of stations already owned by the applicant, the financial situation of the station(s), and the nature of the market in light of the Commission's diversity and competition concerns).

radio/TV/newspaper combinations) without harming the programming, advertising, or viewpoint diversity markets.[48] Accordingly, New World submits that the experience of the grandfathered stations provides evidence that relaxing the radio-television cross-ownership rule would provide economies of scale and ensure the competitiveness of free, over-the-air broadcasting without adversely affecting other markets.

IV. The Commission Should Continue to Permit LMAs for Television Broadcasting

The FNPRM requests comment on extending the Commission's policy concerning the attributability of radio broadcast time brokering agreements to television time brokering agreements, or "local marketing agreements" ("LMA").[49] An LMA is a type of joint venture that involves the sale by a licensee of discrete blocks of time to a broker who then supplies the programming to fill that time and sells the commercial spot announcements to support it.[50] Under an LMA, separately owned stations can share advertising, technical facilities and programming arrangements to obtain certain economies of scale.

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[48] New World also supports the elimination of the newspaper-broadcast cross-ownership rule once the legislation restricting the Commission to make such a rule change is rescinded.

[49] A radio licensee's time brokerage of any other radio station in the same market for more than 15% of the brokered station's weekly broadcast hours results in counting the brokered station toward the brokering licensee's national and local ownership limits. Id. at 133 (citing 47 C.F.R. § 73.3555(a)(2)(i)).

[50] Id. at para. 133.

New World recommends that LMAs be permitted in television to the extent that co-ownership of the participating stations would be permissible under the rules as revised by this proceeding. If the Commission relaxes its duopoly rules as proposed herein, the concern with LMAs is reduced. Moreover, even if the duopoly rules are not changed, the Commission should permit LMAs because operation of two stations by one entity in the same market may serve the public interest. There may be situations where two stations may want to enter an LMA for limited purposes, i.e., advertising, or for a short period of time. In other words, one entity may not want to own two stations in the same market. In any event, the Commission has transfer of control and real party in interest precedent which cover the abuses that there might be with LMAs. It should hesitate to interfere with the variety of cooperative arrangements that broadcasters may enter into in different market situations because (presumably) they are motivated by economic incentives to capture efficiencies available in joint operations rather than to monopolize the market.

CONCLUSION

For the reasons stated above, New World strongly recommends that the Commission seize this opportunity to modernize its multiple ownership rules so that they promote the realization for the public of the full benefits of the highly competitive national and local multichannel video markets.

Respectfully submitted by:

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Dated: May 17, 1995

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